

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20543

DISPATCHED
FCC Docket No. 93-276

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Ridgecrest and Lenwood, California)

RM-8154

NOTICE OF PROPOSED RULE MAKING

Adopted: March 8, 1993;

Released: March 31, 1993

Comment Date: May 21, 1993

Reply Comment Date: June 7, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the petition for rule making filed by Roy William Mayhugh, tr/as KLOA Radio ("petitioner"), licensee of Station KLOA-FM, Channel 285A, Ridgecrest, California, seeking the substitution of Channel 285B1 for Channel 285A and modification of its license to specify operation on the higher powered channel. In order to accommodate the request in conformity with the minimum distance separation requirements of the Commission's Rules, petitioner also requests the substitution of Channel 283A for Channel 285A at Lenwood, California, and modification of the authorization for Station KIQQ-FM.¹ Petitioner states that he will apply for Channel 285B1 if it is allotted to Ridgecrest, as requested.

2. In support of the proposal, petitioner states that the requested substitution at Ridgecrest will remove a site restriction on its present operation and will enable Station KLOA FM to expand its coverage area. Additionally, petitioner avers that the Lenwood substitution would afford Station KIQQ-FM an opportunity to improve its facilities to 6 kilowatts. Petitioner's proposal includes a letter from Eneida Orchard, licensee of Station KIQQ-FM, consenting to the requested substitution proposal at Lenwood, provided it is reimbursed for the costs incurred in the frequency change.

3. Channel 285B1 can be substituted for Channel 285A at Ridgecrest at the petitioner's suggested site, located 4.5 kilometers (2.8 miles) east of the community.² Channel 283A can be substituted for Channel 285A at Lenwood at the authorized site for Station KIQQ-FM.³ However, since Lenwood is located within 320 kilometers (199 miles) of the Mexican border, the Commission must obtain concurrence of the Mexican government in the proposal.

4. Since the petitioner's modification request conforms with the provisions of Section 1.420 of the Commission's Rules, we shall propose to modify the facilities of Station KLOA-FM at Ridgecrest and Station KIQQ-FM at Lenwood, California, as requested, without entertaining other expressions of interest.

5. Whenever an existing licensee or permittee is ordered to change frequencies to accommodate a new channel allotment, Commission policy requires the benefitting party to reimburse the affected station for the costs associated therewith. *See Circleville, Ohio*, 8 FCC 2d 159 (1967). In this instance, petitioner failed to state his willingness to reimburse Station KIQQ-FM, Lenwood, California, for its reasonable expenditures associated with moving to proposed Channel 283A to accommodate petitioner's modification request for Station KLOA-FM at Ridgecrest. Therefore, petitioner is advised to state his intention regarding reimbursement to the licensee of Station KIQQ-FM in his comments herein.

6. An *Order to Show Cause* to Station KIQQ-FM at Lenwood is not required in view of its consent to the petitioner's modification request. However, we will serve Eneida Orchard with a copy of this *Notice*.

7. In view of the above, we consider it appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.207(b) of the Commission's Rules, with regard to the communities listed below, as follows:

City	Channel No.	
	Present	Proposed
Ridgecrest, California	224B1, 285A	224B1, 285B1
Lenwood, California	245A, 285A, 297A	245A, 283A, 297A

7. IT IS ORDERED That the Secretary of the Commission SHALL SEND a copy of this *Notice* by Certified Mail, Return Receipt Requested, to Eneida Orchard, Radio Station KIQQ-FM, SVL Box 8500, Victorville, CA 92392.

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we

¹ Although petitioner's request was signed, he failed to include an affidavit verifying that the statements contained in his petition are accurate to the best of his knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel shall be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.402(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of

Section 1.52 regarding subscription and verification. Petitioner is requested to correct this omission in his comments.

² Coordinates at the petitioner's suggested site for Channel 285B1 are 35-36-27 and 117-37-29.

³ Coordinates at the authorized site for Station KIQQ-FM are 34-51-20 and 117-02-57. Consideration of this proposal, and termination of this proceeding, is conditioned upon the adoption of a working arrangement between the United States and Mexican governments to implement the 1992 U.S./Mexico FM Broadcast Agreement.

note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before **May 21, 1993**, and reply comments on or before **June 7, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Roy William Mayhugh
KLOA Radio
731 N. Balsam Street
Ridgecrest, CA 93555

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.